

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,
Plaintiff,

vs.

No. 16 CR 289 MCA

TYSON SICILY ATOLE,
Defendant.

UNOPPOSED MOTION TO CONTINUE TRIAL

NOW COMES defendant Tyson Sicily Atole, by and through his counsel Benjamin A. Gonzales, Assistant Federal Public Defender, and moves the Court to continue the trial set for April 11, 2011.

As grounds for this request, counsel states:

1. On January 26, 2016, the federal grand jury issued its Indictment charging Mr. Atole with assault with a dangerous weapon and assault resulting in great bodily injury, in violation of 18 U.S.C. §§ 113(a)(3) and 113(a)(6). On February 5, 2016, Mr. Atole was arraigned in this case before United States Magistrate Judge William P. Lynch. Mr. Atole is not in custody.

2. Investigation of the underlying facts of this case by counsel for Mr. Atole is just beginning. On February 11, 2016, counsel for Mr. Atole received a total of 135 pages of discovery documents. Additionally, two compact discs containing video recordings of witness interviews, photographs of the scene and other evidence relevant to this case have

been disclosed to counsel for Mr. Atole. Counsel has been advised by counsel for the government that evidence of a new crime, and new discovery, will be forthcoming. Discovery is not yet complete in the prosecution of Mr. Atole. Review and organization of such a large volume of discovery is labor intensive and quite time consuming. Counsel is diligently working to absorb this material, at the same time that he provides service to other criminal defendants. Discussions between counsel and his client about this discovery and the direction in which this case will move are just beginning. As the discovery is reviewed, decisions will need to be made regarding the filing of pretrial motions, entry into plea negotiations and possible preparations for trial. Additional time is needed within which to complete these tasks.

3. Mr. Atole submits that good grounds exist for continuance of this trial under 18 U.S.C. § 3161(h)(7)(B)(i). Under 18 U.S.C. § 3161(h)(7)(A), by allowing counsel for Mr. Atole and Mr. Atole more time so that they can discuss the extensive discovery submitted to them by the government; so that counsel can receive discovery not yet disclosed; so that counsel can further investigate the facts revealed by such discovery; so that counsel can decide whether or not substantive pretrial motions need to be filed and perhaps to begin plea negotiations with counsel for the government, the ends of justice are served and outweigh the best interest of Mr. Atole and the public in a speedy trial. Continuance of this trial would be consistent with the holding in *United States v. Toombs*, 574 F.3d 1262 (10th Cir. 2009). Under the circumstances set out above, counsel would request that the Court continue the trial of this cause to its June 2016 trial docket.

4. Counsel has discussed with Mr. Atole his right to have a speedy trial under 18 U.S.C. § 3161. Counsel has also explained to his client that additional time is needed in order for counsel for Mr. Atole to investigate the facts and law of this case, to decide whether or not pretrial motions should be filed and perhaps to engage in plea negotiations with counsel for the government, so as to be able to decide whether this case can be resolved by motion, by plea agreement or by jury trial. Understanding this need, defendant Tyson Sicily Atole waives his right to a speedy trial under 18 U.S.C. § 3161 and desires for the Court to continue the trial of this cause. It is believed by counsel that 60 days would be sufficient time to clarify whether this case will proceed by motion, plea agreement or jury trial.

5. Defense counsel has spoken with counsel for the government, Assistant U.S. Attorney Joseph M. Spindle, and was advised that the government does not oppose the granting of this motion.

WHEREFORE defendant Tyson Sicily Atole requests that the Court continue the trial of his cause for 60 days as requested above.

I HEREBY CERTIFY THAT on the 24th day of March 2016, I filed the foregoing electronically through the CM/ECF system, which caused AUSA Joseph M. Spindle to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

Respectfully submitted,

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/s/ Filed electronically
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